

## REMARKS

In the Office Action mailed March 30, 2010, the Examiner rejected claim 3 under 35 U.S.C. §112, second paragraph, for the specific reason set forth on page 2 of the Office Action. As the Examiner will please note, by the amendment of claim 3 proposed above, Applicant has amended steps (b) and (c) by changing the word "ending" to the word "suspending" in step (c) and by further defining step (b). Applicant now believes that the rejection of claim 3 under 35 U.S.C §112, second paragraph, has been rendered moot.

In addition, claim 3 was rejected under 35 U.S.C. §103(a) as being unpatentable over Domazakis (US 2003/0049364) in view of Brandt (Marinades 'Meat' Challenges). For the reasons that follow, Applicant traverses this ground for rejecting amended claim 3 of the present application.

To review the relevance of the Domazakis reference (hereinafter referenced as D1), as already discussed in Applicant's previous communication, D1 does not relate to cured meat-based products made from entire muscular tissue, but rather to a completely different category of meat-based products, namely emulsion-type meat-based products, such as frankfurter-type sausages. The method for the production of emulsion-type meat-based products described in D1 differs significantly from the method of the present application in numerous respects, which have also already been discussed in Applicant's previous communication.

The Brandt "Marinades 'Meat' Challenges" reference (hereinafter referenced as D2) may be considered as constituting closer prior art than D1, since D2 provides technical features referring to the production method of cured meat-based products from entire muscular tissue. The subject matter of D2 refers to "Marinades" and ingredients conventionally used for their making. However, there is absolutely no indication in D2 to use olive oil in meat products of

entire muscular tissue, and no mention of the particular process features as claimed in the present application required to stably incorporate olive oil into such products in a way that avoids oil exudation, i.e. (i) the use of a maximum overall process temperature of  $<4^{\circ}\text{C}$  during the preparation of the cured meat-based products up to the step of the heat treatment, (ii) the delayed addition of olive oil after the pieces of entire muscular tissue have been injected with brine and have been tumbled fully and, (iii) the use of a second tumbling step after the addition of the olive oil.

Regarding the low mixing, tumbling and massaging temperatures suggested in D2, these are suggested in connection with tenderization of meat [ see page 2, second paragraph: "Mixing, tumbling and massaging of meat at low temperatures facilitates tenderization through disintegration of the muscle fiber sheath and stretching of the myofibrils."], and there is no hint provided to the average skilled person with regard to the use of an overall process temperature of  $<4^{\circ}\text{C}$ , as an important prerequisite for the stable incorporation of liquid fatty substances, such as olive oil. In addition, D2 is silent on the use of more than one independent tumbling phase.

Moreover, a combination of D2 with D1 does not lead the average skilled person to the subject matter of amended claim 3 of the present application. As already mentioned above, D1 relates to a completely different category of meat products. According to D1, the olive oil containing emulsion-type products are prepared by mixing finely chopped meat with water, salt, polyphosphoric salts, preservatives, vegetable proteins, milk proteins and starch in an appropriate mixing apparatus, such as a meat cutter, and subsequently mixing the chopped meat with olive oil when the temperature of the mixture is  $2^{\circ}\text{C}$ , thereby arriving at a finely comminuted meat-based emulsion with an end temperature of  $4^{\circ}\text{C}$ . D1 discloses mixing prior to the addition of olive oil and the continuation of mixing after the step of olive oil addition, but it certainly not

teaches that mixing is stopped, after the meat has been fully "mixed" by tumbling, then inserting olive oil therein and proceeding with mixing in a further independent mixing-by-tumbling step. D1, in fact, neither teaches the average skilled person something about the preparation of entire muscular tissue-based products, nor about the way of successfully incorporating olive oil into a piece of entire muscular tissue. By referring to a completely different product category, D1 would not have had been considered by the average skilled person concerned with the incorporation of olive oil into entire muscular meat pieces, and D1 is, thus, not relevant to the present application. On the other hand, even if the average skilled person would have ignored the fact that D1 belongs to a completely different category of meat-based products and would have presumed from D2 that low temperatures would be favorable for the making of the said products, he would have had been instructed by D1 to use all the listed ingredients suggested therein [see § 0036, D1: "This aim is achieved with the mixture of meat of low fat content in frost with olive oil in combination with the use of vegetable proteins, milk proteins, polyphosphoric salts, water and salt."]. However, this is not described in the present application. Moreover, neither D1 nor D2 give any hint to the average skilled person regarding the way of incorporating olive oil into a piece of entire muscular tissue. In particular, the average skilled person is neither taught to add the olive oil to the pieces of entire meat, after they have been injected with brine and have been fully tumbled, nor taught to proceed into a second independent mixing by tumbling phase.

In summary, it can, therefore, be stated that there is no teaching in the prior art of record as a whole that would have prompted the average skilled person to modify or adapt the information provided in D2, in view of D1, in order to arrive at the novel process of amended claim 3 of the present application.

For all these foregoing reasons, Applicant respectfully requests entry of the foregoing amendment to claim 3 under Rule 116, reconsideration of the present application in light thereof and in light of the foregoing remarks, and then allowance of amended claim 3 over all the prior art of record.

Respectfully submitted,

By Clifford W. Browning  
Clifford W. Browning  
Reg. No. 32,201  
Krieg DeVault LLP  
One Indiana Square, Suite 2800  
Indianapolis, IN 46204-2079  
Phone: (317) 238-6302

KD\_IM-2848072\_1.DOC